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Sent by: owner-permit@stuart.r07.epa.gov

10/09/2007 09:00 PM

Please respond to

permit@stuart.r07.epa.gov

To

permit@stuart.r07.epa.gov

cc

bcc

Subject

Re: Removal of Brick/Boiler MACT language from permits

Attorney Client / Ex. 5

David Orlin

Office of General Counsel

U.S. EPA 2344A

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Gracy

Danois/R4/USEPA/

US@EPA

To

Sent by: permit@stuart.r07.epa.gov

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art.r07.epa.gov

Lee Page/R4/USEPA/US@EPA

Subject

Removal of Brick/Boiler MACT

10/09/07 04:01 language from permits
PM

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to
permit@stuart.r0
7.epa.gov

Greetings:

The following paragraph presents one of our state's views regarding the best way to process the removal of Brick/Boiler MACT language from permits. The response was prompted by us calling the state and questioning their use of the Administrative Amendments procedures in their title V regulations. Their adm. amendments rules is similar to the Part 70 requirements. Our position is that these type of amendments do not accommodate these type of changes. Here's the state's reply:

Thank you for your recent call regarding processing of permits to remove MACT language that has been vacated by the courts. We, too, have struggled with defining the procedure that best fits this highly unusual scenario.

In re-evaluating this question we were focused on two goals. We wanted to change the permits as quickly as possible without risk to the facility or without tying any additional requirements to the facility. In addition, we wanted you all to have a record of the change.

We recognized that the vacature left the MACT requirements in a state of non-federal enforceability. And yet, the requirements were still in a permit issued by the DAQ and are therefore arguably state-enforceable.

Where we are is that we believe that our state-permitting procedures under 2Q .0300 should be followed, and that the same changes are administrative from the Part 70 view (since the requirements are not Federally enforceable).

A final concern with the use of either a minor or significant process is the fact that these provide the EPA with a mechanism to possibly require

us to follow 112(j). We do not believe that is appropriate. I hope you can understand our concerns and of course, we are willing to discuss this further.

We understand that when a facility approaches the state to modify their permit, the state needs to take action on these permits and can't wait for us to issue guidance. We also believe that EPA has already stated (although not yet in writing!) that 112(j) applies, regardless of the modification type, so we don't agree with the state's position presented above.

Any feedback regarding this issue will be appreciated!

Gracy

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